IN THE HIGH COURT OF BOMBAY AT GOA
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FIRST APPEAL NO. 110 OF 1998

1. Mrs. Satyavati Sahadev
   Dhargalkar, alias Kaulekar,
   of major age,

2. Miss Ujwala Sahadev
   Dhargalkar, alias Kaulekar,

3. Master Keshav Sahadev
   Dhargalkar, alias Kaulekar, and

4. Miss Deepa Sahadev Dhargalkar
   alias Kaulekar, appellants
   at sr. no.2 to4 represented by
   their mother and natural
   guardian, Mrs. Satyvati Sahadev
   dhargalkar alais Kaulekar,
   the appellant no.1 herein, all
   r/o Guirim, Bardez, Goa. ... Appellants.

Versus

1. Mr. Sayyed Abdul Sattar, of
   major age, r/o House No.120,
   near Maruti Temple, Valpoi
   Bazar, Valpoi,

2. Mr. Ramesh Mahadev, of
   major age, r/o Valpoi, and

3. United Insurance Co.Ltd.,
   Head Office, Panaji, Goa. ... Respondents.

Shri A. D. Bhobe, advocate for the appellants.

Shri A.R.S. Netravalkar, advocate for the respondents.

CORAM : F.I. REBELLO, J.

DATE : 24th July, 2003.

ORAL JUDGMENT

This is an appeal by the claimants against the order of the Motor Accident Claims Tribunal dated 29th August, 1998, dismissing the Claim Petition. In an accident which took place on 3rd February, 1992, the husband of appellant no.1 and father of appellant nos.2, 3 and 4, succumbed to the injuries

sustained on account of the accident when the scooter which he was driving, met with an accident with vehicle no. GDS-1924 owned by respondent no.2 and insured by respondent no.3. Respondent no.1 filed a written statement that the accident arose on account of the negligent driving by the deceased on the motor cycle and there is no fault of the respondent no.1 and as such was not liable to pay compensation. Respondent No.2 had adopted the written statement filed by respondent no.1. Respondent no.3 set out that there was an insurance policy for the period 16th April, 1991 to 15th April, 1992 and its liability is only in the event respondent no.2 was held liable.

2. The learned Claims Tribunal framed several issues, of which issue nos.1 and 4 were in respect of rash and negligent driving by the deceased and respondent no.1, respectively. The learned Claims Tribunal had answered issue no.1 in the affirmative and issue no.4 in the negative and on account of which it rejected the application for compensation. On assessing the evidence, the learned Tribunal held that the evidence of the claimants' witnessses could not be accepted. Insofar as the issue of rash and negligent driving is concerned, on behalf of the appellants they examined C.W.2. It is in his evidence that he was behind the scooter driven by the deceased and he was about 30 to 35 metres when a bus came from Panaji side towards Mapusa at a very fast speed. When the bus reached at a culvert that bus came suddenly towards

the right side of the road and dashed on the front side of the scooter. The bus had come on the right side because there was another scooter which was proceeding towards Mapusa side on the left side of the road. He deposed that the collision was on the right side of the bumper and the right headlight of the bus was broken. The bus went on dragging the body of the deceased Sahadeo for a distance of about 10 to 15 metres and then stopped on the left side by further 15 to 20 metres. The scooter was also dragged under the front portion of the bus till it stopped. He has also stated that he was also a panch at a panchanama conducted at the scene of the accident. In cross-examination he has set out that the speed of the scooter would be about 30 kms. per hour and that the panchanama was correctly recorded. He has deposed that there were no drag marks of the bus, but there were only dragging marks of the scooter. There were also no brake marks of the scooter. He denied the suggestion that there were no brake marks of the scooter. He has stated that he was not knowing the number of the scooter which had overtaken the bus. In his opinion, the bus was going at a speed of 70 kms. per hour In the panchanama produced, it is seen that the bus was lying at a distance of 33 1/2 metres from the point of impact and the dead body at 15 1/2 metres from the skid mark on the road. The left side rear tyre of the bus was on the katcha road and the front tyre of the same side at the edge of the road.

Respondent no.1 examined himself. In his evidence he

deposed that when the bus reached at Boiginim near Mapusa there was another bus coming from the opposite direction at the same time and he saw a scooter that was coming from behind the said bus and the scooter was trying to overtake the said other bus. While so overtaking, the deceased dashed the scooter on the right side of the bus on the bumper and even the brake pedal of the bus came up when the scooter had dashed it. The other bus had crossed his bus and it had reached half portion of his bus. He had applied his brakes and was at a slow speed of 30 kms. per hour. Due to the impact of the scooter the brake pedal came up and even his leg was injured. He tried to apply the brake, but it could not be applied as it was not working, but he slowly managed to stop the bus. In the written statement, this version was not at all pleaded, namely that of another bus crossing him and the scooter trying to overtake the other bus. In his cross-examination he denied that he was not driving at 30 kms. per hour and not at 70 kms. per hour and the brake pedal had com in reverse due to the impact. He denied that was overtaking another scooter, which was on his left side. Another witness examined was Ankush Narvekar, the conductor, who has also deposed to another bus coming. He has deposed that the driver applied brakes when the scooter came and gave a dash on the front driver's side of the bus. Their bus, it is contended was being driven at a speed of about 35 kms. per hour He deposed that he has seen the scooter when it was at a distance of about 5 to 6 metres and it came all of a sudden and dashed

against the bus. In his cross-examination, he has deposed that the bus had not stopped to take passengers between Panaji till the time it met with the accident as it was packed. He had started collection of money. He denied that he had not seen the scooter,that was that he could not have seen the scooter from the place where he was standing. He denied that the bus did not apply brakes or that their bus was overtaking another scooter and in the process dashed against the on-coming scooter. The third witness is the brother of respondent no.2. According to him, at the time of the accident, the bus was at a speed of 20 to 30 kms. per hour It is his case that the said bus which was coming was in the process of overtaking and that time the scooter came and dashed against their bus. He denied the suggestion that he could not see the incident or that the bus was being driven at a fast speed and rashly and negligently. According to him he came to know about the application of brakes from the sounds.

3. What is clear from this is that insofar as the claimants are concerned, their evidence is consistent with the plea as raised in the claim statement. The respondent nos. 1 and 2 have disclosed for the first time in the evidence about the other bus. there was no such pleading. The only pleading was denial of the plea as raised by the claimants. The other aspect which has to be borne in mind is that the bus was travelling from Panaji to Mapusa and it had not stopped for any passengers to alight or to be taken. It is impossible for

this Court, at least considering that the bus stopped from the point of impact at a distance of about 33 1/2 metres, to believe that the bus was travelling only at a speed between 25 to 30 kms. per hour per hour. Secondly, if that be so, it is also difficult to believe that the brakes had failed on account of the impact. In fact, the scooter had got entangled into the bus and was dragged alongwith the bus. The evidence of the respondents, therefore, cannot be accepted. However, considering the panchanama of the scene of the offence and the conflicting versions about the deceased overtaking another scooter, what can be said is that there was negligence both on the part of the deceased as well as of respondent no.1.

4. In the light of that it must be held that both the issues no. 1 and 4 are partly proved.

5. Considering the finding that there was contributory negligence on the part of the deceased as also the respondents, the apportionment will have to be on the basis of 50% each. The deceased at the time of his death was aged 48 years. Income claimed by the appellants was at the rate of Rs.2000/- per month. The deceased was a driver. There is, therefore, no difficulty in fixing the monthly income of the deceased at Rs.2000/- per month. Therefore, the yearly income would be Rs.24,000/-. Taking 1/3rd for his personal use, yearly dependency would be Rs.16,000/-. Multiplier would be 13. Thus the dependency would be worked

out to Rs.2,08,000/-. Considering 50% contributory negligence, the amount would come to Rs.1,04,000/-. Add to this Rs.10,000/- towards cost of funeral and other expenses as admissible. The appellants, therefore, would be entitled to a sum of Rs.1,14,000/- alongwith interest at 8% from the date of application, which is dated 31st July, 1992, till payment. The amount already paid to be adjusted against the amount awarded. The balance amount to be deposited before the Motor Accident Claims Tribunal, Panaji, within eight weeks from today. The said amount to be apportioned in the following manner:-

50% in favour of the appellant no.1 and the balance 50% to be divided equally amongst appellant nos.2, 3 and 4.

The insurance company to deposit the amount within eight weeks from today.

Appeal accordingly disposed of.

F. I. REBELLO, J.

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